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Nader & Donna Mahdavi
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7 UNITED STATES BANKRUPTCY COURT

8 NORTHERN DISTRICT OF CALIFORNIA, SANTA ROSA DIVISION

9 In re:

10 NADER & DONNA MAHDAVI,

11
12 Debtors

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14 NADER & DONNA MAHDAVI,

15 Plaintiffs,

16 v.

17 OCWEN LOAN SERVICING,

18 Defendants.
19

Case No: 09-12809AJ-13

Chapter 13

Adv. No:

COMPLAINT TO DETERMINE VALUE OF
REAL PROPERTY, DETERMINE THE
EXTENT OF SECURED CLAIMS AND TO
EXTINGUISH THE LIEN OF OCWEN
LOAN SERVICING

20 TO THE DEFENDANTS OCWEN LOAN SERVICING:

21
22 Plaintiffs Nader and Donna Mahdavi, allege:

23 1. The court has jurisdiction over this proceeding pursuant to 28
24 U.S.C. 1334(a).

25 2. This is a core proceeding under 28 U.S.C. §157(b)(2)(K) and (O).

26 3. Venue properly lies in this judicial district pursuant to 28

27 U.S.C. §1409(a), in that the instant proceeding is related to the
28

1 case under Title 11 of the United States Code, which is before this
2 court.

3 4. On August 31, 2009 (the "Filing Date"), Plaintiffs commenced a
4 case under chapter 13 of Title 11 of the United States Code, which
5 was assigned case number 09-12809.
6

7 5. At all times relevant, Plaintiffs were the owners and resided at
8 that certain real property commonly known as 840 Chardonnay Circle,
9 Petaluma, CA 94954 (the "Real Property"), more particularly
10 described as:

11 THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF
12 PETALUMA, COUNTY OF SONOMA, STATE OF CALIFORNIA AND IS DESCRIBED AS
FOLLOWS:

13 Parcel One:

14 Lot 20, as shown upon the map entitled Sonoma Mountain, filed in
15 the Office of the County Recorder of Sonoma County on February 28,
16 1994 in Book 522 of maps, at page(s) 13 through 17, Sonoma County
Records.

17 Parcel Two:

18 An easement for private storm drain purposes over Lot(s) 1 through
19 19, as said easement and lot(s) are shown upon the map entitled
Sonoma Mountain.

20 APN: 137-221-020-000

21 6. Plaintiffs are informed and believe and based on such allege
22 that as of the Filing Date, the Real Property had a value of
23 \$295,000.00. A true and correct copy of the Appraisal of Real
24 Property, as of September 2, 2008, prepared by Michael Dunlap,
25 ("Appraisal") is attached hereto as Exhibit "1" and incorporated
26 herein by this reference. Additionally, a true and correct copy of
27 the Declaration of Michael Dunlap regarding the Appraisal and
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1 Subject Property is attached hereto as Exhibit "2" and incorporated
2 herein by reference.

3 7. Plaintiffs are informed and believe and based on such allege
4 that the Real Property was subject to a first deed of trust in
5 favor of MortgageIT, Securities Corp. The First Deed of Trust was
6 recorded on March 30, 2007, with the Sonoma County Recorder's
7 Office and is recorded as Instrument 2007036309 of Official
8 Records. The trustee of the mortgage is HSBC Bank USA, N.A. The
9 current servicing agent of the loan is America's Servicing Company,
10 which had a balance of \$427,814.96 as of the Filing Date. A true
11 and correct copy of the Proof of Claim is attached hereto as
12 Exhibit "3" and incorporated herein by this reference.
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14 8. Plaintiffs are informed and believe and based on such allege
15 that the Real Property was subject to a second deed of trust in
16 favor of First Franklin, N.A. which had a balance of \$104,501.15 as
17 of the Filing Date. The Second Deed of Trust was recorded on
18 February 10, 2005, with the Sonoma County Recorder's Office and is
19 recorded as Instrument 2005018245 of Official Records. A true and
20 correct copy of the Proof of Claim is attached hereto as Exhibit
21 "4" and incorporated herein by this reference.
22

23 9. A true and correct copy of a Subordination Agreement between First
24 Franklin, N.A. and MortgageIT attached as Exhibit "5".
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26 10. On March 23, 2010, First Franklin, N.A. transferred their claim
27 to LCS Financial Services Corporation. On October 22, 2014, LCS
28 Financial Services Corporation later transferred their claim to

1 Ocwen Loan Servicing. The Proof of Claim shows a balance of
2 \$104,501.15 as of the date of filing. A true and correct copy of
3 the Transfers of Claim are attached as Exhibit "6" and are
4 incorporated herein by this reference.
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I.

FIRST CLAIM FOR RELIEF

VALUATION OF SECURITY

11. Plaintiffs re-allege the allegations in paragraphs 1 through 8 of the Complaint as if fully set forth here.

12. Plaintiffs allege that the Real Property became property of the bankruptcy estate upon the filing of the petition, which commenced the underlying chapter 13 case.

13. Pursuant to 11 U.S.C. §506(a) and Fed. R. Bankr. Proc. 3012, Plaintiffs request that the Court determine the value of the Real Property.

II.

SECOND CLAIM FOR RELIEF

DETERMINATION OF THE EXTENT OF AMERICA'S SERVICING COMPANY'S LIEN

14. Plaintiffs re-allege the allegations in paragraphs 1 through 8 of the Complaint as if fully set forth here.

15. Pursuant to 11 U.S.C. §506(a) and Fed. R. Bankr. Proc. 3012, Plaintiffs request that the Court determine the nature and extent of the lien held by AMERICA'S SERVICING COMPANY on the Real Property.

III.

THIRD CLAIM FOR RELIEF

DETERMINATION OF THE NATURE AND EXTENT OF OCWEN LOAN SERVICING'S

SECOND LIEN

1 16. Plaintiffs re-allege the allegations paragraphs 1 through 8 of
2 the Complaint as if fully set forth here.

3 17. Pursuant to 11 U.S.C. §506(a) and Fed. R. Bankr. Proc. 3012,
4 Plaintiffs request that the Court determine the nature and extent
5 of debtors' second lien held by Ocwen Loan Servicing on the Real
6 Property.
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8 IV.

9 FOURTH CLAIM FOR RELIEF

10 EXTINGUISHMENT OF OCWEN LOAN SERVICING'S SECOND LIEN

11 18. Plaintiffs re-allege the allegations in paragraphs 1 through 8,
12 9 through 12, and 12 through 15 of the Complaint as there set forth
13 here.
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15 19. Plaintiffs are informed and believe and based on such allege
16 that the claim of Ocwen Loan Servicing is completely unsecured and
17 under applicable law may be determined to be a general unsecured
18 claim.

19 20. Plaintiffs are informed and believe and based on such allege
20 that the Court has the authority under applicable law, including 11
21 U.S.C. 1322(b), to confirm a chapter 13 plan which provides for
22 Ocwen Loan Servicing as a general unsecured creditor.
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24 21. Plaintiffs are informed and believe and based on such allege
25 that the Court has the authority under applicable law to extinguish
26 the lien of Ocwen Loan Servicing upon Plaintiffs' completion of
27 payments under the plan and issuance of a discharge.
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REQUEST FOR JUDGMENTS AND ORDERS

Based on the foregoing, Debtors request that the Court enter a judgment which:

1. Determines the value of the Real Property to be \$295,000;
2. Determines that America's Servicing Company's lien is secured in an amount exceeding the value of the Real Property;
3. Determines that Ocwen Loan Servicing's claims are wholly unsecured;
4. Extinguishes Ocwen Loan Servicing's lien and permits modification of the claim under §1322(b)(2); and
5. For such other and further relief as the Court deems just and proper.

Dated: 3/16/17

PRICE LAW GROUP, APC

By: 

Rabin J. Pournazarian
Attorney for Plaintiffs